



SHTETI

THE STATE

30%

I QASSHËM
PËR QYTETARËT

ACCESSIBLE TO
CITIZENS

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1. Executive summary

A key instrument of democratic states is transparency and accountability of public institutions for their actions. The right of the public to request and obtain documents of public interest is considered the main legal mechanism to guarantee such transparency. Kosovo has good legislation that provides access to public documents, however, this report proves that public institutions do not respect the applicable legislation, as they often deny the citizens access to public documents.

In order to better understand the implementation of this legislation, Balkan Investigative Reporting Network has monitored and tested the applicability of this law for over one year, submitting around 300 requests for access to public documents. Public institutions have responded to merely 30 percent of all such requests.

The state has proven to be closed, especially in relation to Kosovo budget expenditure, judicial documents and financial reports of political parties.

The requests reveal that the least open institution is the Office of Prime Minister of Kosovo, followed by the Municipality of Prishtina, Kosovo Cadastre Agency, Kosovo Prosecutorial Council and Kosovo Judicial Council.

In monitoring the application of this law, BIRN revealed that the National Agency for the Protection of Personal Data is the key institution that continuously strives to use 'legal means' to help institutions remain closed to the public. Concretely, the dangerous initiative of this institution comprises an open tendency to remove asset statements of senior public officials from the internet, which would mark one step back for the transparency standards achieved after the war in Kosovo.

In another occasion, this agency rejected access to travel expenses of senior officials, justifying this with the fact that some part of their diets may be made public, and thus threaten the privacy of public officials.

At the same time, a number of institutions that have timely responded to BIRN's requests within the legal timeframe and were as such identified as more open. Among them are the Business Registration Agency, Anti-Corruption Agency and the Office of the General Auditor. Therefore, the most open were independent institutions.

2. The right to be informed

In Europe, access to public documents is guaranteed with Regulation No. 1049/2001 of the European Parliament, which regulates in detail subjects that are granted the right to obtain public documents, definitions, exemptions, document provision, fulfillment of requests and timelines.

This right, which is considered to ensure transparency, is also guaranteed by two recommendations of the European Council, namely Recommendation No. R (81) 19 on access to information held by public authorities¹ and Recommendation R (2002) 2 on access to public documents², according to which European citizens have the right to request and obtain public documents and the states have to guarantee their rights in this respect.

Legislation that guarantees access to public documents is relatively recent. According to the international organization on the right to information, in 90s only 13 states had laws that guaranteed access to public documents, with the current number of states granting such rights currently exceeding 100.³ However, legislation of the countries of Balkan, includ-

¹ See the recommendation at: [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec\(1981\)019_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(1981)019_EN.asp)

² See recommendation, at <https://ecd.coe.int/Vie8Doc.jsp?id=262135>

³ International standards report: Right to information, April 2012, available at:

ing Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Montenegro, Romani and Serbia is considered weaker. According to the Director of the Stabile Center for Investigative Journalism, Sheila Coronel, "access to public data in Balkan is poor in comparison to Western Europe or Northern America".⁴

Before elaborating on Kosovo's legislation on access to public documents, it is important to distinguish between information provided upon request to access public documents and information in leaked documents.

A leaked document, namely when a document is provided to a journalist through a source or in other non-official manners, without submitting a request to access public documents, is not considered a document obtained based on the law on access to public documents. Subsequently, journalism based on leaked documents is not considered investigative journalism. According to the "Digging deeper" guide for investigative journalism, "Leaked journalism is not investigative journalism. An investigation can be initiated by a leak, but journalists should themselves conduct research, verify information and provide the context."⁵

Kosovo legislation guarantees access to public documents. This is stipulated in the Kosovo Constitution, adopted in 2008, according to Article 41 of which "every person enjoys the right to access public documents." However, the legal basis guaranteeing access to public documents dates even earlier. The first law on access to public documents since 2007, when journalists, civil society activists, citizens and all other stakeholders were provided with the legal basis for requesting access to public documents.

Concrete application of this law was never at a satisfactory level; hence, the European Commission contin-

uously criticized local institutions in this regard in its progress reports. In 2008, one year after the law had entered into force the progress report claimed that "application of the law on access to official documents should be improved,"⁶ while concluding one year later that "the law is not being applied in entirety."⁷ In 2010, the Institute for Advanced Studies (GAP)⁸ published an analysis of the implementation of the law on access to official documents, in which it listed some of the aspects of this law that were difficult to implement. Among them were the lack of registers (at that time the institutions were requested to keep registers of public documents), the fact that requests submitted electronically were paid less attention than those submitted in physical form, while noting the lack of online contact with persons responsible for the review of requests and scarce reporting of cases when the law is not implemented to the Ombudsperson.⁹

Three years later, in the end of 2010, the Assembly of Kosovo improved the legal framework providing citizens with access to documents, by approving the law on access to public documents (this law is no longer called law on access to official documents).¹⁰

Although the law is relatively good in theory, its implementation is again subject of criticism by European institutions and the Office of Prime Minister of Kosovo. In 2011, the progress report stated that institutions don't possess statistics on documents requested.¹¹

Most independent organizations, established by the Assembly of Kosovo, as well as judicial and prosecutorial bodies, declined to report to the Government on requests for access to public documents, the report of the Office of Prime Minister on access to public documents for 2011 states.¹²

The current law is in certain aspects more favorable regarding requests for documents. Whereas the old law

4 Digging deeper, guide for investigative journalists in Balkan, published in 2009. A copy of this book can be provided through a request to BIRN, addressed to kosova@birn.eu.com

5 Ibid

6 Kosovo Progress Report 2008, page 15, available at: http://ec.europa.eu/enlargement/pdf/press_corner/key_documents/reports_nov_2008/kosovo_progress_report_en.pdf

7 Kosovo Progress Report 2009, page 13, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2009/ks_rapport_2009_en.pdf

8 The Institute for Advanced Studies GAP is a Kosovo Think Tank established in October 2007. GAP directly participated in tens of government working groups on policy drafting a large number of public documents currently applied acknowledges GAP's contribution in their drafting. More information on GAP available at: <http://www.institutigap.org>

9 Access to public documents, GAP Institute, page 2, available at: [http://www.institutigap.org/documents/59273_Qasja_ne_Dokumente_Publike\(GAPanalize\).pdf](http://www.institutigap.org/documents/59273_Qasja_ne_Dokumente_Publike(GAPanalize).pdf)

10 List of laws published in the official gazette available at:

<http://gazetazyrtare.rks-gov.net/Documents/Lista%20e%20Ligjeve%20e%20Fuq%20shqip.pdf>

11 2011 Progress Report, page 9, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf

expressly required the request to be filed in written form, the current law allows for requests to be made 'in any manner', including written form (which may be submitted in person in offices or sent through mail), electronic mail and verbally through telephone or in person.¹³

In Macedonia too requests may be presented in three ways: verbally, in writing or electronically. In Albania, the form of request submission is not specified in the law, while in Serbia requests have to be filed in written form.

One of the ways provided by law, since postal services in Kosovo are not reliable and often used by public authorities as reasons for not receiving letters, most official requests made by BIRN were simultaneously sent by electronic mail, physical copy in the institution/office and through mail.

Another favorable aspect for the public is the timeline provided for institutions' response, which the new law stipulates to be seven days, whereas the old law provided for fifteen days. Regulation No. 1049/2001 of the European Parliament on access to public documents envisages the deadline of 15 days, with the possibility of extension only in cases when documents requested are voluminous in size.

In Kosovo the seven day deadline can be postponed in two cases – if the information or document has to be requested outside the public institution and if a sole request made by one party requests a number of information or public documents.¹⁴

The law also requires the appointment of officials that will be in charge of requests for public documents in different institutions. According to a research conducted by Jeta në Kosovë newspaper¹⁵, all nineteen ministries of the Government of Kosovo have ap-

pointed their officials for addressing requests for access to public documents. However, the appointment of these officials occurred one year after the entry into force of the law, in August 2011.¹⁶

Although these officials are appointed, in most ministries their names are not made public in official web-pages, which made contact with them more difficult and often even impossible. BIRN continuously visited ministry web-pages (especially the section 'contacts') and found that officers in charge of access to public documents are not found there.¹⁷ In one specific case, the contacts link of the Ministry of Agriculture, Forestry and Rural Development¹⁸ links you with the direct payments for wheat, livestock and other sectors and projects of the ministry.¹⁹

Another problematic aspect of the law in Kosovo and the European legal basis is that legislation mainly guarantees access to documents, but not also information, especially on verbal information (data that can be obtained verbally). For this reason the key European organization, Access Info Europe, which is active in access to official documents, believes that in XXI century democracy it is crucial for citizens to be guaranteed the right to know what decisions are taken on their behalf. Hence, according to this organization, the restriction of the right to know in documents only, for legal reasons, is an old concept.²⁰

3. Only 30 percent of requests are answered

Between January 2012 and May 2013, Balkan Investigative Reporting Network sent around 300 official requests for access to public documents and information to Kosovo institutions, international missions in the country and political parties. Requests were made for reporting purposes of Jeta në Kosovë newspaper (published online), shows Jeta në Kosovë and Drejtësia në Kosovë and for the English language newspaper Pr-

12 Comprehensive report on access to public documents in 2011, Office of Prime Minister, p. 6, available at: http://kryeministri-ks.net/repository/docs/Raporti_2011_Shqip.pdf

13 Law on Access to Public Documents, Article 6, Paragraph 1, available at:

[http://gazetazyrtare.rks-gov.net/Documents/Ligji%20per%20qasjen%20ne%20dokumentet%20publike%20\(shqip\).pdf](http://gazetazyrtare.rks-gov.net/Documents/Ligji%20per%20qasjen%20ne%20dokumentet%20publike%20(shqip).pdf)

14 Law on Access to Public Document, Article 6, Paragraph 1, available at: [http://gazetazyrtare.rks-gov.net/Documents/Ligji%20per%20qasjen%20ne%20dokumentet%20publike%20\(shqip\).pdf](http://gazetazyrtare.rks-gov.net/Documents/Ligji%20per%20qasjen%20ne%20dokumentet%20publike%20(shqip).pdf)

15 Jeta në Kosovë newspaper is a medium in Albanian established in September 2011, which aims to provide objective information and analyses, always following global journalism standards. Above all, it focuses on the quality of operations of public institutions and relevant investigations, as the prevailing genre of its reporting. JnK newspaper is a product of the Balkan Investigative Reporting Network.

16 Public Documents Less Accessible, 28 January 2013, available at: <http://gazetajnk.com/index.php?cid=1,3,4516>

17 Web-pages were last viewed by BIRN on 16 June 2013

18 Ministry of Agriculture, Forestry and Rural Planning

19 Public Communication Office, MAFRD, <http://www.mbpzhr-ks.net/?id=4,724,738,766,a>

20 Guide for Access to EU Documents, Access Info, p. 14, available at:

http://www.access-info.org/documents/Access_Docs/Advancing/EU/EN_ONLINE_Guide_on_access_to_EU_Documents.pdf

ishtina Insight.

Requests were sent to all ministries of the Kosovo Government, Office of Prime Minister, Independent Media Commission, Kosovo Judicial Council, Kosovo Prosecutorial Council, Kosovo Statistics Agency, Office of the Auditor General, Kosovo Business Registration Agency, Independent Commission for Mines and Minerals, Kosovo Privatization Agency, Kosovo Cadastral Agency and Kosovo Chamber of Advocates.

The focus of requests for access to documents sent to public institutions was mainly public expenditure made during official travels abroad, documents proving suitability and implementation of public contracts awarded to public companies, final disciplinary decisions against judges, prosecutors and attorneys, various minutes of meetings, including those from Kosovo-Serbia negotiations and meetings of independent agencies, donation registers, contributes to political parties, and similar.

From the overall number of requests sent to all institutions, only around 100, or 30 percent, were answered, including positive, partially positive and negative responses.

Of 300 requests, around 100 were sent to the Office of Prime Minister, through which access to public documents and information was requested. The Office of Prime Minister rejected in silence most filed requests, by not answering them at all. In only a scarce number of cases this institution responded to our requests. In certain cases, reasons given by institutions for not providing access to documents were not in compliance with the legal framework, and BIRN has selected some of the most unusual responses to present for the purposes of this report.²¹

a) During 2012, BIRN, through Jeta në Kosovë newspa-

per, requested from the Municipality of Prishtina access to documents related to the issuance of a construction permit in Prishtina Municipality. In its response of February 2012, the municipality expressed difficulties in providing this document. "The requested document was issued by the Directorate of Urbanism, Construction and Environment Protection, however after internal reorganization of the local authorities, this department is now transferred to a new facility," states the response given by the municipality.

Transfer from the old to new premises deranged the Archive of Municipality of Prishtina, says further the response. "In the new facilities of the abovementioned department there was an organized internal archive, however, with the transfer of this unit to the new municipal building, part of the documentation was transferred to the new facility, but the majority was not – hence the archive is severely deranged."²²

b) Similar to Prishtina, Kosovo Cadastral Office is another important institution that restricted access to public documents for BIRN. In two cases when access to data on cadastral parcels was requested, KCA provided a negative response, recommending for the said requests to be made to another institution – Municipality of Prishtina.

Therefore, KCA does not possess the said information, however, its actions were in violation of the Law on Access to Official Documents, since according to this law the institution is obliged to forward the request to the respective institution. "If the public institution does not possess or does not supervise the information, and has knowledge for respective body..., is obliged to send the request to the respective body or to its sector, which possessed or supervises the information," states paragraph 3 of Article 7 of the Law on Access to Public Documents.²³

²¹ All cases published in Jeta në Kosovë newspaper under the title "Government closes, by taking care of its officials' diets", 28 December 2012, available at: <http://gazetajnk.com/?cid=1,979,4235>
²² Ibid

c) in another event, on 20 April 2012, the Agency for the Protection of Personal Data had published 'an opinion on access to and publication of expenses and invoices of the Prime Minister and Deputy Prime Ministers.'²⁴

According to this opinion, invoices should be kept secret, since 'publication of invoices exceeds the purpose of the request for transparency of public expenses and threatens the privacy of Prime Minister and Deputy Prime Ministers' and 'food invoices may include data that reveal religious affiliation or current health state of the officials.'²⁵

4. Requests for access to public documents

4.1 Travel expenses of the Prime Minister and Deputy Prime Ministers

In 2012, BIRN asked from the Office of Prime Minister (OPM) to have access to expenses and invoices billed by the head of the executive branch, Hashim Thaçi, and six Deputy Prime Ministers of the Republic of Kosovo – Behgjet Pacolli, Hajredin Kuçi, Mimoza Kusari-Lila, Slobodan Petrovic, Edita Tahiri and Bujar Bukoshi, during their official travels and meetings – made through their official bank cards. OPM had provided the total amount spend, but not also copies of invoices as specifically requested in the request.

Against this incomplete response provided by OPM, BIRN filed an appeal to the Ombudsperson Institution, which had subsequently requested from the Office of Prime Minister to publish the said invoices. In response, the Office of Prime Minister requested from the National Agency for the Protection of Personal Data to clarify whether BIRN's request is considered to violate personal data considerations.

For the first time since its establishment on 23 June

2011, NAPPD issued an opinion that concluded that 'access to expenses and invoices of senior state officials infringes sensitive personal data and privacy of the Prime Minister and Ministers.'²⁶ The opinion stated that "food invoices contain data that may reveal religious affiliation or health state of the officials." Therefore, according to NAPPD, these invoices could not be provided as they contained information on the kinds of food and drinks used in official meetings, which could be used to prejudice the health state and religious affiliation of the officials.²⁷

Also, the agency considered that publication of invoices would reveal data on third persons, which "could prejudice commercial interests of companies". Therefore, according to this agency, revealing expenditure and invoices could reveal data related to the company that offered services to public institution officials.

This conclusion is in violation of the European Court of Human Rights case law, which while deliberating on a case in Moldova, raised by Timpful Info Magazine and Anghel Company²⁸ in 2007, decided that "when a private company decides to participate in transactions related to considerable public funds, it voluntarily becomes exposed to greater public scrutiny."²⁹

Subsequently, in Kosovo NAPPD should not protect private companies if they are included in transactions involving public funds.

"In specific, if accusations are raised on suspicious public fund transactions, the company has to admit public critique," the court ruling states.³⁰

An analogy with the request to access expenditure of official representatives is found in the case of official expenses in Great Britain. The globally renowned BBC network requested access to expenses of the members

²³ Ibid

²⁴ This case is explained in detail below.

²⁵ Ibid

²⁶ See opinion of the National Agency for the Protection of Personal Data, 30 April 2012, available at: http://www.amdp-rks.org/repository/docs/Opinion_per_faturat.pdf

²⁷ National Agency for the Protection of Personal Data is established by the Assembly of Kosovo to which it reports on annual basis. NAPPD provides advice to the Assembly of Republic of Kosovo, central government and local authorities, all bearers of public authority in Kosovo, but also to private institutions on issues related to the protection of personal data. The Agency is headed by the council, which comprises the Chief State Supervisor and four national supervisors, while decisions of the council are taken in simple majority. Currently, this Agency is headed by Chief State Supervisor Ruzhdij Jashari, Deputy Chief State Supervisor Bekim Demiri and National Supervisors Ramadan Qehaja and Aleksandar Spasic. All supervisors are proposed by the Government and appointed by the Assembly of Kosovo.

²⁸ The case Timpful Info Magazine & Anghel v. Moldova relates to the publication of critiquing article by Timpful Magazine, on the failure to publish data on tenders related to the purchase of vehicles. The Government and two companies involved in this article had sued the newspaper, considering that the article was defamatory and that there was no public interest on this article. Three courts, including the Supreme Court of Moldova had found the newspaper guilty of defamation, but the European Court of Human Rights deliberated that the Moldavian state violated Article 10 of the European Convention on Human Rights, which guarantees the right of expression and obtainment of information.

²⁹ Timpful Info Magazine & Anghel v Moldova, 2007, European Court of Human Rights, available at: <http://echr.ketse.com/doc/42864.05-en-20071127/vie&>

of British parliament. Initially the Parliament had stated that the provision of details in documents requested by BBC may pose a threat for these senior state officials. However, the court had decided to give advantage to public interest, thus allowing access to the said expenses.³¹

Of six Deputy Prime Ministers, only Deputy Prime Minister (and Minister of Local Government Administration), Slobodan Petrovic, granted BIRN access (in September 2012) to expenses made in official travels. The Director of the Department for Public Information, Lumnije Demi, electronically sent, within the legal deadline, all invoices from Deputy Prime Minister Petrovic's expenses. Invoices were scanned and contained details such as the hotel, date and time of stay, amount paid and description of articles purchased, when payments were made in restaurants.³² Similarly, Minister of European Integrations, Vlora Çitaku, also provided access to invoices for expenses made during official travel abroad.³⁴

4.2 Office of Prime Minister rejects requests in silence

In May 2012, the Office of Prime Minister of Kosovo published its own report on the implementation of the law on access to public documents. In a speech held during this event, Deputy Prime Minister and Minister of Justice Hajredin Kuçi stated that "it is a clear orientation of central and local institutions to respect the law on access to public documents." "Above all, to grant the public and media access to information on all relevant activities, as prescribed by law," Kuçi said then. However, when this ministry's readiness to provide access to more sensitive public documents was tested by BIRN, he did not express such readiness to implement the law and rejected such access by not responding at all.³⁵

In March 2013, BIRN, through Jeta në Kosovë newspaper, waited in vain for weeks to receive an answer by Deputy Prime Minister Hajredin Kuçi in relation to the financial reports of the Kosovo Democratic Party, where he serves as the first Vice-President.

In another case, the newspaper possesses a document issued by Kuçi and addressed to the Director of the Kosovo Intelligence Agency, in which he requested to initiate an investigation in Dubrava prison. As a consequence, a number of persons were demoted. BIRN asked to verify this document, but the Ministry and Minister never addressed the said request.³⁶

In October 2012, BIRN, through Jeta në Kosovë newspaper requested from MoJ access to the draft-law on Republic of Kosovo's Special Prosecutor's Office, which should have anyway been posted in the official webpage of the said Ministry, but the ministry rejected this request stating that the draft-law should be requested in the Prosecutorial Council, who were members of the working group compiling the draft-law. BIRN requested the said document from the Prosecutorial Council, but the latter responded by saying that the request should be made to the Ministry of Justice, the reason being that the draft-law provided to the newspaper by its sources, envisaged a special criminal chamber to treat potential cases of corruption among country's senior officials, although the Constitution guarantees equality in front of the law.³⁷

4.3 Report on the construction of Prishtina – Skopje highway

BIRN requested from the Ministry of Infrastructure access to the copy of the working report of company "EGIS BCEOM International" regarding the construction of Prishtina – Skopje highway. Public shows high interest on the construction of this highway, since it was stated in the media that its construction will cost

³⁰ Ibid

³¹ Parliament loses the battle in the war on expenses, April 2008, available at: http://neës.bbc.co.uk/2/hi/uk_neës/politics/7404031.stm

³² BIRN requested access to expenses made between 5 February 2011 and 31 August 2012

³³ Documents of the Ministry of European Integration were requested by BIRN in August 2011 and returned within the deadline determined by the law on access to public documents.

³⁴ OPM publishes the first report on application of the right to access public documents, available at: http://www.kryeministri-ks.net/index.php/2009/03/repository/docs/Plani_i_Veprimet_per_Reformen_e_Menagjimit_e_finanave_publike.pdf?page=1,

³⁵ Although the Minister of Justice responded to requests for questions and interviews in Drejtësia në Kosovë and Jeta në Kosovë shows, no such readiness was shown by the Ministry in providing access to information or documents.

³⁶ Jeta në Kosovë newspaper, Kuçi's request followed by an investigation on sincerity by KIA, 25 March 2013, available at: <http://gazetajnk.com/?cid=1,979,5113>

hundreds of millions of Euros.

The Secretary General of this ministry had approved the request to access the said documents based on Decision No. 2284/2011. However, other officials of this ministry failed to implement Secretary's decision. In certain cases when BIRN officials went to the ministry of request different documents, they met different officials and not merely the officer for access to public documents.

BIRN again approached the Ombudsperson Institution (OI), who sent an official letter to the ministry requesting to be informed on the actions taken by this institution in relation to BIRN's request. Regardless, the Ministry of Infrastructure never responded.

As a result, OI considered that the Ministry of Infrastructure refused to cooperate with this institution and "this manner of behaving and Ministry's silence represent sufficient grounds for initiating administrative procedures for persons responsible for communication." In a special report of 25 October 2012, OI criticized the Ministry of Infrastructure and ordered this ministry to respond to OI – this did not happen.

In this report, the Ombudsperson Institution addressed three recommendations to the ministry, namely stating that the Ministry:

- a) should initiate administrative procedures, including disciplinary measures, against responsible officials;
- b) should undertake all necessary legal actions to ensure that all respective ministry officials are informed, by means of a decision, that they have a legal obligation to respond to OI, and
- c) should inform OI on any actions taken, in response to this report.

4.4 List of Government's lobbyists and foreign advisors

In January 2012, BIRN requested from the Office of Prime Minister access to the list of foreign advisors and lobbyists, including their data, wages and period of engagement by the Government of the Republic of Kosovo.

The reason for this request was the signature of a one-year contract (on 29 August 2011) between the Government and American lobbying firm Patton Boggs, valued at 600,000 USD. The company was hired to "stimulate investments and trade opportunities for Kosovo, and to gather funds from foreign aid programs," the contract states.³⁸

The request for access to documents related to this lobbying company were continuously sent, as the Government had decided in 2010 to offer it an agreement, while sidestepping all tendering procedures. Prishtina Insight had reported on this case then, and this resulted with the cancellation of the said agreement by the Government.³⁹

OPM was silent again, hence BIRN approached the Ombudsperson. The Ombudsperson addressed a request to OPM four months later, requesting to be notified on actions undertaken in relation to BIRN's request. OI considered that OPM had to respond to BIRN in a timely manner, and in accordance with the Law on Access to Public Documents, for the requests submitted to the Office of Prime Minister.

NAPPD also deliberated on this request that the list requested by BIRN contains data that are directly related to foreign advisors and lobbyists, and since such data depicts the manner of their work, disclosing them may have an effect on their professional work. This argument is invalid when knowing that American lobbyists

³⁷ Jeta në Kosovë newspaper, "Special" court for the powerful, available at: <http://gazetajnk.com/?cid=1,979,3487>

³⁸ Jeta në Kosovë newspaper, Kosovo's "secret lobbyist", 9 November 2011, available at: <http://gazetajnk.com/?cid=1,3,565>

³⁹ See the notification of the Office of Prime Minister on contract cancellation, <http://www.kryeministri-ks.net/?page=1,9,1720>

are obliged to declare their funds to the American Department of State.

Details of the contract between Patton Boggs and the Ministry are published online,⁴⁰ as required by US legislation and can be found on Foreign Agents Registration Act webpage - www.fara.gov.

Similarly, in Europe it has become common practice to reveal issues related to lobbying. In December 2009, The Times journalist, Dominic Kennedy, had requested from Scottish ministers information on the Prince of Wales' lobbying on environmental matters among local authorities. The ministers had rejected the request, stating that this would be in violation of the principles of personal data protection. Kennedy was not satisfied with this decision and appealed at the information commissioner, which concluded that the newspaper is entitled to the said information and that the said documents should be published.⁴¹

4.5 Prosecutors and judges subject to disciplinary measures

In October 2012, BIRN requested from the Kosovo Prosecutorial Council and Kosovo Judicial Council access to the final decisions of sanctions/measures issued to judges and prosecutors that committed disciplinary offences, as a consequence of misconduct. Both abovementioned institutions did not provide access to names of judges and prosecutors.

BIRN considers that it is important to publish names of judges and prosecutors against which disciplinary procedures have concluded, as this would help the judicial system, which is under constant criticism for corruption, prove that it is undertaking certain measures towards the mitigation of problems. On the other hand, if such information is hidden from the public, this will create the impression that the entire judicial and prosecutorial system is corrupt, and not only certain individuals.

ecutorial system is corrupt, and not only certain individuals.

The ways these institutions reacted are depicted below. Initially, KPC requested to meet BIRN officials to "discuss" the request, although such meetings to discuss requests are not necessary. Ultimately, with some weeks delay, KPC decided to reject the request, reasoning that "requested documents contain personal data, the disclosure of which violates the right to privacy". As envisaged in the law on access to public documents, BIRN filed a claim-suit against the Kosovo Prosecutorial Council.⁴²

In a similar fashion, Kosovo Judicial Council decided not to allow access to the names of judges against which disciplinary measures for misconduct and unprofessional behavior were issued. KJC offered BIRN a list that shows the number of judges subject to disciplinary measures, but their names are deleted. Later, KJC reasoned that it is preparing an "internal regulation" that will regulate access to names of judges.

4.6 Courts and prosecutors' offices also conceal documents

Indictments are documents through which prosecutors' offices press charges against one or more persons whenever they suspect that a criminal offence has occurred. According to the law on access to public documents, these documents are public, as they are not part of the list of exemptions in its Article 12. This article clearly stipulates that exemptions are made only when the document may threaten national safety, defense and international relations, public security, prevention, exploration and prosecution of criminal activities, disciplinary procedures, etc.

However, in practice in Kosovo access to indictments

⁴⁰ Contract available at: <http://www.fara.gov/docs/2165-Exhibit-AB-20110831-33.pdf>

⁴¹ Scottish Information Commissioner is a public official appointed by the Queen and nominated by the Scottish Parliament, responsible for the implementation and promotion of laws on access to public documents in the country. Decision available at: <http://www.itspublicknowledge.info/UploadedFiles/Decision039-2011.pdf>

⁴² Law suit prepared and submitted in close cooperation with the "Justice and the people" campaign. This campaign is a movement that gathers citizens and civil society groups in Kosovo working in justice system reform and promotion of public advocacy and change. More information on the campaign available at: justiceandthepeople.org

is denied with great stubbornness by both Kosovo and EULEX prosecutors. Currently there is no web-page in Kosovo where indictments raised by prosecutors' offices are published. During 2012 and a part of 2013, BIRN requested access to over 50 indictments.

Kosovo and EULEX prosecutors' offices rejected the requests, with the argument that indictments should be obtained in courts.⁴³ On the other hand, courts have not provided access to indictments, but have rather told BIRN officials to approach prosecutors' offices. The same is applicable for decisions on pre-trial detention of defendants, appeals for release from pre-trial detention and other related judicial procedure documents.

Denial of the right to have access to these documents and non-transparency of courts and prosecutors' offices to this end endangers media objectivity, as they are forced to report only the allegations of defense lawyers and defendants, whom had in some occasions used the media to argue their stands, thus creating a false public perception on the given case, which often also comprised a denigration of the work of the state prosecutor.

In United Kingdom, indictments and other evidence used in trial, as well as maps and images (including photographs of the accused), recordings of the crime scene, confiscated items (weapons, drugs, stole items, etc.) are public documents.⁴⁴

4.7 Tentative to remove statements of assets from the internet

One of the most harmful initiatives for transparency and democracy standards in post-war Kosovo is that of the National Agency for the Protection of Personal Data to remove statements of the wealth of Kosovo's senior public officials from the internet. On 16 July 2012, Jeta në Kosovë newspaper reported on this ini-

tiative, which was confirmed by the deputy chief state supervisor, Mentor Hoxhaj. According to Hoxhaj, the main reasons behind the Agency's initiative are 'risks' that failure to implement the law on protection of personal data may pose. "We have to be sincere regarding the risks that derive from the publication of data online. As soon as the data is placed on the internet, and the data depicts the personal wealth of individuals, such individuals may be subject of an assault as soon as they step out," said Hoxhaj in July 2012.⁴⁵

In the current setting, every year some four thousand asset statements of individuals holding senior public positions are posted in the web-page of the Anti-Corruption Agency, as required with the law regulating the work of this agency. However, NAPPD has requested urgent removal of these statements from the internet, with the justification that officials that have more substantial assets may be 'endangered'. Moreover, this agency's control officials have stated that if necessary, they will send the anti-corruption law to the Constitution Court for review of constitutionality. To date, BIRN is not aware whether any concrete actions were undertaken in this direction. Asset statements are substantial documents that journalists and other citizens may use to dig into eventual enrichment of public officials and their business relations.

4.8 Political party financial reports

Central Election Commission, an institution established by the Assembly of Kosovo, was not ready to provide the financial reports of political parties, which according to the law on finances of political entities should be published online.

The official web-page of CEC only publishes financial reports of political parties for 2010 and 2011, however, financial reports for all years preceding 2010 and those

⁴³ In very scarce cases, local prosecutors provided copies of the indictments.

⁴⁴ Key laws for journalists, by McNae, Mark Hanna, Mike Dodd, published by Oxford, page 150.

⁴⁵ Jeta në Kosovë newspaper, "Authorities don't want to place asset statements on the internet", 16 July 2012, available at: <http://gazetajnk.com/?cid=1,2,2687>

for 2012 are not posted.⁴⁶ In March and April 2013, BIRN requested from CEC access to financial reports of political for 2012, and managed to obtain this information, although significantly later than envisaged by law. In order to ensure access to these reports, BIRN held more than three meetings with officials of the Office for Political Party Registration and Certification.

BIRN also requested access to financial registers from political parties, such as Kosovo Democratic Party, Kosovo Democratic League, Alliance for the Future of Kosovo, Alliance for New Kosovo and Self-Determination Movement. Based on the law on funding of political entities, financial reports are public documents, however, with the exception of Self-Determination Movement, none of the political parties offered access to financial reports. Self-Determination Movement offered all documents requested by BIRN within the deadline. This party also published the said reports in their web-page.

5. Office of Prime Minister: we have provided responses in 94 percent of cases

The Office of Prime Minister of Kosovo is obliged to publish an annual comprehensive report, to inform the public on the implementation of the law on access to public documents.

While in 2012, OPM launched the report in a public conference also attended by media; this was not replicated in 2013.⁴⁷

In March, OPM published the report only online. The report has no exact date, but is dated 2013. BIRN requested clarifications from the Director of the Office for Information of OPM as to why the report was not launched in a public event, but received no answer.

According to OPM's report, Presidency, Assembly and Constitutional Court of Kosovo have cumulatively received 47 requests, also submitted by journalists, most of whom requesting data on budget, expenses and statistics.⁴⁸

The largest number of requests, according to the report, was received by the Government of Kosovo, and in 94 percent of the cases responses were provided within the legal deadline.

According to the report, independent agencies established by the Assembly of Kosovo have received 86 requests and have granted access to 79 percent of them; publicly-owned enterprises have received 8 requests and provided access in all of them, whereas municipalities received 588 requests and granted access in 530 occasions.⁵⁰

In the Office of Prime Minister's comprehensive report of public institutions' realization of the right to access public documents for this year again lists an array of problems related to the implementation of this law.

Based on this report, the number of institutions established by the Assembly of Kosovo which report on the implementation of the right to access public documents remains small since, according to OPM, independent agencies consider reporting of statistics on implementation of the law on access to public documents an infringement of their independent work. The report considers that the issuance of a decision in writing on the rejection or permission of access to requested documents represents a problem, since "various institutions have regulated differently the issue of written decisions." Thirdly, the report mentions the lack of information campaigns which would clarify who is the owner of requested documents, as well as how to file a request. However, the OPM report does not provide a sample request for access to public doc-

⁴⁶ Reports available at: <http://kqz-ks.org/sq/raportet-financiare-auditimet>

⁴⁷ See notification of the Office of Prime Minister on the launching of the report on 29 May 2012, at: http://www.kryeministri-ks.net/index.php/2009/03/repository/docs/Plani_i_Veprimet_per_Reformen_ne_Menagjimin_e_financave_publike.pdf?page=1,9,2888

⁴⁸ Comprehensive report of public institutions on the implementation of the right to access public documents, Government of Kosovo, Prishtina 2013, p. 13, available at: http://www.kryeministri-ks.net/repository/docs/1_Shqipp.pdf

⁴⁹ Ibid

⁵⁰ Ibid

uments.

In another report, published in June 2012 by the Center for Policy and Advocacy, which monitored the law by sending requests to public institutions in two different time periods, states that in the first instance, institutions responded to around 40 percent of cases, while in the second phase institutions responded to around 60 percent of the requests.⁵¹

According to this report, the main challenge remains the manner of request submission and sending, since institutions often request for the request to be filed in writing, and in physical copies, which is not a legal obligation. Another challenge, according to the report, remains the lack of confirmations for receiving requests and lack of coordination between officials in different institutions.⁵²

6. Good examples of the implementation of the law

6.1 National Theatre

In February of this year, BIRN requested from the Ministry of Culture full access to the files of candidates for the director post in the National Theatre (including CVs, letters of motivation and justifications for their applications). The Ministry of Culture asked for the legal opinion of the National Agency for the Protection of Personal Data, requesting a clarification on whether the publication of said data comprises an infringement of personal data protection rights.

NAPPD issued a positive opinion⁵³ and allowed access to the said CVs. Namely, NAPPD decided to allow access to certain information requested in the public vacancy, such as name, professional qualification, work experience, other skills like computer skills, knowledge

of foreign languages, etc.

The Agency rightfully considered that the said data will satisfy public interests and is not excessive for accomplishing its purpose, while not comprising the dignity of data subjects, thus finding a balance between personal data protection and interest public.⁵⁴

6.2 Gifts for senior officials

In December 2012, BIRN requested from the Anti-Corruption Agency access to the register of gifts stated by senior public officials, which they are supposed to declare to this institution. ACA provided access in the complete register of gifts declared within the legal term.

As a result, BIRN revealed that the register is not adequately completed and informed the public on various gifts received by public officials during one year. According to the data available, all senior public officials declared that they received 86 gifts during the year. None of them is a member of the Kosovo Assembly. Prime Minister Thaçi received only one gift, which was not made public. Municipality of Skenderaj received trucks, busses and vehicles as gifts. Others reported receiving books, clothes, wines, vases and coffee.

In general, ACA may be considered an institution that respects the law on access to public documents, as it provides easy and prompt access to documents at its possession. However, a similar assessment can't be made on the content of their documents, such as various decisions taken by ACA in the discharge of its competencies.⁵⁵

6.3 All invoices of the Office of General Auditor public

BIRN requested copies of invoices for fuel and expenses billed for lunches/dinners by the officials of this

⁵¹ Right to access public documents, application results and challenges, Center for Policies and Advocacy, June 2012

⁵² Ibid

⁵³ Agency opinion on the request for access to files of candidates in the vacancy for the director of the National Theatre, available at: http://www.amdp-rks.org/repository/docs/Opinion1_MKRS.pdf

⁵⁴ Among other, the opinion states that data found in general files of the candidates contain excessive personal data, including court confirmations on the candidates' criminal backgrounds, therefore NAPPD did not allow the publication of these documents.

institution for the period January 2011 – 31 August 2012. In a very efficient manner, within five days the office prepared the voluminous material of around 100 pages of bills and expenses, which were delivered to BIRN in a physical copy by the communications office of this institution. OGA did not use the excuse of OPM, which stated that bills may reveal commercial interest of third parties. Moreover, the Office of General Auditor expressed its readiness to provide additional clarifications on invoices presented, in case BIRN considered this necessary.

6.4 Company information provided within one day

For over one year, throughout the period during which BIRN submitted requests for access to company information, Kosovo Business Registration Agency has shown extraordinary openness and provided access to such files without difficulty. On some cases, KBRA offered files of such companies within one day, which is highly appreciated by media, bearing in mind the haste for publishing related news. These files are significant because they provide media and civil society insight on the shareholders and other relevant data on companies which are awarded public tenders. Based on these files, Jeta në Kosovë newspaper exposed in August 2012 that one of the companies competing for the privatization of the local telecommunications company (PTK) comprised shareholders of the largest private telecommunications company (IPKO), which could be in contradiction with competition rules.⁵⁶ The said shareholder later withdrew from the competition to purchase PTK.

6.5 Passport production contract

The Ministry of Internal Affairs offered full access in the problematic contract on production of passports, executed between Austrian company OeSD and MIA, in January 2013. The contract was of great public interest,

as months earlier it was revealed that the company contracted by the ministry had not received 1.4 million euro in payments, although the ministry confirmed to have made the payments. As a result, one person was arrested and detailed investigations were carried out by the European Union Rule of Law Mission in Kosovo. However, MIA did not provide other documents related to the production of biometric passports, including invoices paid by the institution to the Austrian company, justifying this with the ongoing investigation. It provided BIRN with the figures and dates of each payment.

55 The recent ACA decision on the conflict of interest of Naser Canolli, Director of the Official Gazette, published on 13 May 2013, is ambiguous, unclear and doesn't specify whether the official is in conflict of interest or not. The decision suggests to read the law, which means that the official should himself come to the conclusion whether he is in a conflict of interest or not, although ACA is mandated to provide opinions on whether senior officials are in a conflict of interest situation. The opinion is available at: [http://www.akk-ks.org/repository/docs/OPINION-NASER%20CANOLLI%20\(1\).pdf](http://www.akk-ks.org/repository/docs/OPINION-NASER%20CANOLLI%20(1).pdf)

56 Jeta në Kosovë newspaper, Albright's "secret" shares in IPKO, 27 August 2007, available at: <http://gazetajnk.com/?cid=1,987,2991>

7. Recommendations

1. Institutions should respond to all requests for access to public documents, including those submitted in written form, via email or verbally;
2. Institutions should pay more consideration to issues of public interest, before rejecting requests for access to public documents;
3. Institutions should publish the names and contact information of officers responsible for providing access to public documents, in their official websites;
4. Public institutions should receive and consider verbal requests for access to public documents;
5. Institutions should address with seriousness not only requests for access to documents, but also requests for information;
6. Negative responses should be given in written form and should be well justified;
7. Public institutions should implement continuous awareness raising campaigns to inform the public on their right to access public documents.
8. Institutions should provide continuous training for officers for access to public documents, on the application of legislation that regulates the right to know.

8. Sample request for access to public documents

From: Balkan Investigative Reporting Network - BIRN
To: Office of Prime Minister of the Republic of Kosovo, Government Building, Mother Theresa Blvd., 10,000 Prishtina, Republic of Kosovo
Reference: Request for Access to Public Documents
Date: 12 September 2012

Through this request Balkan Investigative Reporting Network (BIRN) requests access to data on expenses billed by the Prime Minister of the Republic of Kosovo, Mr. Hashim Thaçi, and six Deputy Prime Ministers of the Republic of Kosovo, Behgjet Pacolli, Hajredin Kuçi, Mimoza Kusari-Lila, Slobodan Petrovic, Edita Tahiri and Bujar Bukoshi, during the official visits/meetings conducted in the period 15 February 2011 – 31 August 2012.

In accordance with Law No. 03/L-215 on Access to Public Documents, we hereby request access to the said official documents, and subsequently request to be provided with data including, but not limited to:

- Expenses of the Prime Minister and six Deputy Prime Ministers of the Republic of Kosovo, through their official credit card, during their official travels, meetings and lunches.
- Copies of all invoices for such expenses, excluding the card number and bank account numbers.

Please send the abovementioned data via email, at flutura@birn.eu.com, or mail to the following address: Jeta në Kosovë, Mensa e Studentëve, Kati i Parë, 10000, Prishtinë, Kosovë, or invite us and we will collect them in your office.

Thank you in advance,

Flutura Kusari
Legal Advisor
flutura@birn.eu.com

About BIRN

BIRN was established in summer 2005 with the objective of developing media, raising journalistic capacities and stimulating public debates on political and economic reform in the country. The organization consists of a narrow group of editors and trainers experienced in analytic and investigative journalism on complex political, economic and social topics. BIRN's purpose is to give an impulse to Kosovo's democratic transition, while providing qualitative journalism in this sphere, where public information is scarce, with the aim of developing transparency and accountability. www.birn.eu.com

Jeta në Kosovë newspaper – is a medium in Albanian established in September 2011, with the aim of providing objective information and analyses, always adhering to highest global standards of journalism. Above all, it focuses on the quality of public institutions' functioning, by conducting relevant investigations, as its dominant reporting genre. The newspaper has established its identity by providing investigations, analyses, columns and news on current events in the country and abroad. In December 2012, two articles published in gazetajnk.com were awarded the prizes of best anti-corruption reporting by the United Nations Development Program in Kosovo. The newspaper was also awarded three prizes, including the prize for Journalist of the Year, by the Kosovo Association of Professional Journalists. www.gazetajnk.com

Jeta në Kosovë show – is one of the most viewed television shows in Kosovo, aired by Kosovo's public broadcaster. Jeta në Kosovë addresses various political, economic and social topics, with special focus on corruption, conflict of interest, and public institution accountability. To date, 470 debates were produced, which served to increase transparency and accountability of the key stakeholders and decision-makers in

Kosovo. Since 2006, Jeta në Kosovë show received over four prizes for best television stories. www.jetanekosove.com

Drejtësia në Kosovë show – focuses on the judiciary, policing and safety. The most interesting part of the show is the 'Police' reportage, which depicts Kosovo Police field actions, for which BIRN holds the exclusive rights of recording and airing. Drejtësia në Kosovë has to date won two prizes for the best television story and one prize for the best story of the year. www.drejtësianekosove.com

Prishtina Insight – is the only newspaper in Kosovo published in English on biweekly basis, in over 2000 copies. Prishtina Insight enjoys a strong reputation among local and international decision-makers. Thorough investigative analyses are regularly reproduced in Kosovo media, thus ensuring a wider and more diverse reader base. Prishtina Insight also assists in the development of cooperation between non-governmental organizations, donors and the civil society in general. www.prishtinainsight.com

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